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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,899	05/24/2001	Gerard Reynaud	208822US6XPC	3169
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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER EREZO, DARWIN P	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 12/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,899

Applicant(s)

REYNAUD, GERARD

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

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Drawings

2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 14, 17-20, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,718,415 to Bolnberger et al.

Bolnberger teaches a mask having a flexible cap **1**; an exhalation port **4** pierced through the cap; a first microphone capsule **13** positioned above the exhalation port; a tubular mouth-piece **9, 14** extending from a first distal end disposed adjacent the flexible cap to a second distal end projecting away from the flexible cap, the first microphone capsule mounted at the first distal end of the tubular mouthpiece (the part of **9** closes to the mouth-piece), the second distal end of the mouthpiece disposed away from the microphone capsule and defining aperture turned away from the flexible cap (see Fig. 3); a cable **19** connected to the microphone capsule; wherein Bolnberger the mouthpiece **9,14** (as seen in Fig. 8) is larger than the opening facing the microphone;

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wherein the microphone capsule has an acoustic chamber having a plurality of holes **23** with a high pass filtering capability of about 50-4000 Hz; a body **3** mounted on the flexible cap and an arm **2** extending from the body; wherein the aperture is turned towards a center of a location at which the user's mouth is adapted to be positioned.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,718,415 to Bolnberger et al.

7. As to claim 10, Bolnberger is silent with regards to an elliptical mouthpiece. However, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use an elliptical aperture because Applicant has not disclosed that an elliptical aperture provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the aperture of Bolnberger or the claimed elliptical aperture because both type of aperture perform the same function.

Therefore, it would have been obvious matter of design choice to modify Bolnberger to obtain the invention as specified in claim 10.

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8. As to claim 16, Bolnberger discloses the claimed invention except for the mask further comprising a second microphone capsule. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a second microphone capsule, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

9. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,718,415 to Bolnberger et al. in view of US 5,503,141 to Bolnberger et al.

10. Bolnberger is silent with regards to the mouth-piece having a metal lattice acoustic screen positioned in the aperture. Bolnberger discloses a mask having a cloth acoustic screen **32** positioned in a mouth-piece aperture. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use an acoustic screen in the device of Bolnberger because it protects the microphone capsule from moisture, dust and the like (Bolnberger; col. 5, lines 3-5). Furthermore, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use a metal lattice screen because Applicant has not disclosed how the metal lattice screen provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the cloth screen of Bolnberger or the claimed metal lattice screen because both screens perform the same function.

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11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,718,415 to Bolnberger et al. in view of US 4,961,420 to Cappa et al.

12. Bolnberger teaches all the limitations of the claims except for a mask further comprising a baffle fixedly joined to the flexible cap and positioned between the microphone capsule and the exhalation port. Cappa teaches a baffle **40** attached to a cap and positioned above an exhalation port. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the baffle of Cappa in the device of Bolnberger in order to prevent expired air from penetrating the upper portions of the mask (col. 7, lines 36-43).

13. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,718,415 to Bolnberger et al. in view of US 3,910,269 to Ansite et al.

14. Bolnberger teaches all the limitations of the claim except for a mask further comprising plural catches joined to the flexible cap and mounted substantially perpendicular to an external face of the flexible cap. Ansite teaches a mask having plural catches **53** joined to a flexible cap and mounted substantially perpendicular to an external face of the flexible cap. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the plural catches of Ansite to the mask of Bolnberger because it allows the user to use straps to further secure the mask on the user's head.

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15. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,718,415 to Bolnberger et al. in view of US 3,314,424 to Berman.

16. Bolnberger is silent with regards to the device having an adjustable mouthpiece. Berman teaches a mask having a microphone mounted on an adjustable mouth-piece (via element **44**) that is capable of varying from 10-18 mm. Therefore, it would have been obvious to modify the device of Bolnberger to include the adjustable means of Berman because it allows the user to move the mouth-piece directly in front of the user's mouth.

Response to Amendment

17. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

18. Applicant's arguments with respect to claims 10-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who telephone number is (703) 605-0420. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

dpe


WEILUN LO
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